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Docket No.: 4266-0120PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bruno GAUS et al.

Application No.: 10/576,204

Confirmation No.: 8817

Filed: January 8, 2007

Art Unit: N/A

For: METHOD FOR THE COOLING OF CLEANED
ITEMS IN AUTOMATIC CLEANING AND
DISINFECTING MACHINES

Examiner: Not Yet Assigned

**LETTER SUBMITTING ENGLISH TRANSLATION OF INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Subsequent to the filing of the above-identified application on January 8, 2007, attached hereto is an English translation of the International Preliminary Report on Patentability (Form PCT/IPEA/409) that should be made of record in the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or to credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Dated: JUN 27 2007

Respectfully submitted,

By 

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TRANSLATION**PATENT COOPERATION TREATY****PCT****INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference ME62448PC	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/011709	International filing date (day/month/year) 18.10.2004	Priority date (day/month/year) 17.10.2003
International Patent Classification (IPC) or national classification and IPC A61L2/07, A61G9/02		
Applicant MEIKO MASCHINENBAU GMBH & CO. KG		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>8</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>2</u> sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____ containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability: citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/011709

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-13 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-10 _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☒ the drawings:
- sheets 1/1 _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☒ the claims, nos. 1-10 _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	5, 8-10	YES
	Claims	1-4, 6, 7	NO
Inventive step (IS)	Claims		YES
	Claims	1-10	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
<p>1.1 Document EP-A-0679406 (D1) discloses (the references in parentheses are to the figure in that document) a process for cooling (see claim 12) disinfected products to be cleaned, the process being carried out thermally in a chamber (7) of an automatic cleaning and disinfecting machine (1) having an outlet (X) (see claim 8), a washing or cleaning program with a variable sequence of program steps being implemented within the automatic cleaning and disinfecting machine. That process has the following steps:</p> <p>(a) the final cleaning of the product being cleaned in the chamber is carried out with water (see claim 2) to which auxiliary substances are added,</p> <p>(b) the products to be cleaned in the chamber are thermally disinfected (see claim 1),</p> <p>(c) after the products to be cleaned are thermally disinfected, air is forced into the closed chamber (claim 12), and</p> <p>(d) used air is discharged from the closed chamber through the outlet (X), while the</p>			

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

door of the chamber is kept closed (see
column 7, lines 26-29).

D1 thus appears to deprive the process as per
claim 1 of novelty (PCT Article 33(2)).

- 1.2 D1 also appears to disclose the additional
technical features of dependent claims 2, 3, 4 and
6 (PCT Article 33(2)). Consequently, the process
as per dependent claim 3 does not appear to
involve an inventive step (PCT Article 33(3)).

- 2.1 The objection under PCT Article 33(2) with regard
to the claimed process also appears to apply to
the device as per claim 7, for similar reasons.

The devices as per dependent claims 8-10 do not
appear to involve an inventive step (PCT Article
33(3)).

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. If the problem addressed is that of avoiding re-infection of the disinfected products to be cleaned (see page 4, lines 18-19, of the description), the use of sterile cooling air, as defined in claim 6, would be an essential feature (PCT Article 6).
2. In the original claim 1, it is stated in point (c) that air is introduced into the closed chamber; this can be construed to mean that the door of the chamber is closed. However, it is not stated anywhere in claim 1 that the chamber must be airtight when the door is closed. In particular, it cannot be excluded that air enters or exits through the outlet. In the embodiment depicted in the figure, air-tightness is ensured by a siphon (3), yet this is not mentioned in the original claim 1. Since it appears that the siphon is an essential feature necessary for sealing the chamber, and since the siphon originally appeared only in the embodiment depicted in the figure, the used air pipe (6) fitted with a return valve (7) and which connects the chamber (1) to the outlet (2) downstream of the siphon, would also be essential (cf. observation in Box I, point 1.1).
3. The original claim 1 mentions a thermal disinfection stage. However, the description and the original independent claim 7 indicate that this relates to sterilisation with steam, which

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Box No. VIII Certain observations on the international application

represents a narrower restriction. This contradiction no longer exists in the amended claims which contravene PCT Article 34(2)(b).

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

BOX I**Basis of the report**

1. Feature (d), which comprises the outlet of a siphon (which can receive a water reserve and ensure the sealing of the chamber), was included in claim 1.

This type of siphon was disclosed in the original application only in connection with the embodiment depicted in the figure. In that embodiment, the siphon was disclosed, *inter alia*, in combination with the used air pipe (6) fitted with the return valve (7). That used air pipe represents a bypass to the siphon and appears to represent an essential feature of the embodiment depicted in the figure.

Although the present claim 1 represents a restriction to the original claim 1, it must be considered to be an arbitrary restriction. It should not be allowed to amend claims by including individual features of an embodiment, while neglecting their combination with other features of the same embodiment.

Although the device claim 7 mentions the used air pipe, it does not state that it should represent a bypass to the siphon.

Supplemental Box

Although claims 2 and 5 mention the used air pipe (6) and a shut-off element, respectively, it is nowhere stated in these claims that the used air pipe is supposed to represent a bypass to the siphon.

Consequently, all the claims contravene PCT Article 34(2)(b) at least because of the above-mentioned missing features.

For this reason, the assessment of novelty (PCT Article 33(2)) and inventive step (PCT Article 33(3)) was based on the original claims 1-10.

2. In addition, it should be mentioned that a used air pipe (6) is provided between the chamber and the outlet in the independent device claim 7. However, an used air pipe (6) appears for the first time only in the dependent process claim 2, not in claim 1. Consequently, there appears to exist a contradiction between the two independent claims with regard to the essential features (PCT Article 6).